88-981

NO.

Supreme Court, U.S.
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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

IN RE:
NERRY E. and JUNE J. LAWSON, ET AL
Petitioners

VERSUS

DIAMOND M. COMPANY

PETITION FOR STATUTORY AND COMMON LAW WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1.

Whether defendant/employer, DIAMOND M COMPANY, was negligent in causing injuries to NERRY E. LAWSON.

2.

Whether the dismissal of petitioner, JUNE LAWSON'S, claim for loss of consortium and TONYA LAWSON and TERI LAWSON'S claim for loss of society was in error.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

NO. _____

IN RE:
NERRY E. AND JUNE J. LAWSON, ET AL
Petitioner

VERSUS
DIAMOND M COMPANY

PETITION FOR STATUTORY AND
COMMON LAW WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NERRY E. and JUNE J. LAWSON, individually and on behalf of their minor children, TONYA and TERI LAWSON, by and through undersigned counsel, respectfully petition this Honorable Court to issue a statutory and/or common law writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

The opinions below, the statutes involved, the questions presented and the statement of the case with respect to this petition will be set forth herein.

OPINIONS BELOW

On March 2, 1988, the District Court rendered judgment in favor of defendant, Diamond M Company, and against complainants, NERRY E. LAWSON and JUNE J. LAWSON, individually and on behalf of their minor children, TONYA and TERI LAWSON in a suit, brought pursuant to the Jones Act, 46 U.S.C.A. § 688 and the General Maritime Law seeking compensatory and punitive damages for injuries sustained by NERRY

LAWSON as a result of the negligence of defendant, Diamond M Company, NERRY LAWSON'S employer and the owner of the vessel to which NERRY LAWSON was assigned. Judgment was also entered dismissing the loss of consortium claim of JUNE J. LAWSON and the loss of society claims of NERRY LAWSON'S children. A copy of the District Court opinion is included as Appendix A. A timely appeal to the United States Fifth Circuit Court of Appeals was thereafter made and in a decision entered on August 19, 1988, the judgment of the District Court was affirmed. The unpublished opinion of the Fifth Circuit Court of Appeals is included as Appendix B. Subsequently a petition for rehearing was filed, which petition was denied on September 14, 1988. Appendix C is a copy of the denial of the petition for rehearing.

JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C.A. § 1254. (See *Rules of the Supreme Court, Rule 17*).

Jurisdiction in the District Court existed by virtue of federal question jurisdiction pursuant to 28 U.S.C.A. § 1331 and admiralty and maritime jurisdiction, 28 U.S.C.A. § 1333.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 46 U.S.C.A. § 688, commonly referred to as the Jones Act, provides, in pertinent part:

> "Any seaman who shall suffer personal injury in the course of his employment, may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common — law right or remedy in cases of personal injury to railway employees shall apply:***."

STATEMENT OF THE CASE

Petitioner, NERRY E. LAWSON, was employed by defendant, DIAMOND M. COMPANY, as a seaman and member of the crew of the DIAMOND M EAGLE, a vessel in navigation, owned by defendant, DIAMOND M COMPANY. While so employed in March, 1985, NERRY E. LAWSON sustained a back injury while being lowered by crane in a personnel basket onto a pontoon. The co-employee operating the crane permitted the personnel basket to "free fall", i.e., allowing it to drop unencumbered and at a faster speed than normal, until the clutch is suddenly engaged bringing the basket to an abrupt stop. Following the sudden stop, NERRY LAWSON experienced a burning pain in his low back. As he did not think he was seriously injured he continued to work and following completion of the assignment, NERRY LAWSON discussed the accident with the crane operator in the presence of Emile Beridon, a fellow employee. During that discussion the employee acknowledged the occurrence of the sudden stop. Following the March, 1985 accident, NERRY LAWSON continued to work in pain.

Thereafter in May, 1985, NERRY LAWSON, over his objection, was sent to "fire school" by DIAMOND M COMPANY. NERRY LAWSON objected to attending fire school due to his fear of fire arising from an automobile accident in 1969 during which he was trapped in a burning, smoke-filled pick-up truck and sustained second and third degree burns to his face, hands, arms, back and thighs. The objection to attending "fire school" was communicated to NERRY LAWSON'S supervisor.

During an exercise at the "fire school", NERRY LAWSON was required to enter a dark, smoke-filled building and negotiate his way through it. NERRY LAWSON had difficulty breathing during the exercise due to his fire phobia and the longer he remained in the building the more panic stricken he became. While attempting to descend a set of steps, NERRY LAWSON fell, further injuring his back.

Jurisdiction in the District Court was founded on federal question jurisdiction, 28 U.S.C.A. § 1331 and admiralty and maritime jurisdiction, 28 U.S.C.A. § 1333.

REASONS FOR GRANTING RELIEF

The decision of the United States Court of Appeals for the Fifth Circuit sanctioned such a departure from the accepted and usual course of judicial proceedings by the District Court that a grant of a review of this petition on writ of certiorari is warranted. The decision of the District Court and the affirmation of that decision by the Fifth Circuit Court of Appeals are contrary to the evidence presented at trial as well as to the judicial interpretations and applications of the Jones Act, 46 U.S.C.A. § 688.

NEGLIGENCE OF DIAMOND M COMPANY AND INJURY TO NERRY E. LAWSON

The testimony and other evidence adduced at the trial of this matter support the conclusion that petitioner, NERRY E. LAWSON, was injured in not only one, but two accidents, both accidents being due to the negligence of his employer and defendant herein, DIAMOND M COMPANY.

Because seaman are viewed as wards of the court and because the Jones Act, as remedial legislation, has always been liberally construed, the determination of negligence under the Jones Act differs greatly from ordinary fault situations. One critical distinction is with regard to causation. The very purpose of the Jones Act and its liberal standard is to make recovery on the part of the plaintiff in those hazardous industries, easier to prove than the usual civil tort case. *Thornton vs. Gulf Fleet Marine Corporation, Inc.*, 752 F. 2d 1074 (5th Cir. 1985). Under the Jones Act, if the defendant's slightest bit of negligence plays any part, no matter how slight, in bringing about the plaintiff's injury, the plaintiff prevails. Any cause will suffice, regardless of immediacy and the plaintiff's burden of proving such cause is "featherweight". *Davis*

vs. Hill Engineering, Inc., 549 F. 2d 314, 331 (5th Cir. 1977); *Comeaux vs. T. L. James & Company, Inc.*, 702 F. 2d 1023, 1024, (5th Cir. 1983). The Jones Act employer is held to a high duty of care, under which "even the slightest negligence suffices for a finding of liability". *Spinks vs. Chevron Oil Company*, 507 F. 2d 216, 233 (5th Cir. 1975).

The reason for these special rules in Jones Act cases is rooted in the firmly established view that seamen are the wards of admiralty. The traditional policy of admiralty courts has been to avoid the application of rules of the common law which would affect seamen harshly because of the special circumstances attending their calling. *Socony-Vacuum Oil Company vs. Smith*, 305 U.S. 424, 59 S. Ct. 262 (1939). Thus, the elevated duty of care imposed on the employer, the slight duty applicable to the seamen, and the relaxed duty of proving causation are all expressions of a policy of "protecting seamen from the hazards of their profession". *Spinks*, 507 F. 2d at 223.

Petitioner, NERRY E. LAWSON, met the "featherweight" burden of proof and the evidence and testimony presented at trial clearly show that NERRY LAWSON'S injuries were caused by the negligence of the defendant.

After reviewing the evidence, the District Court concluded as to the March, 1985, accident involving the personnel basket that, "the descent was other than ordinary and the sudden speed reduction was other than routine." (See Appendix A). That conclusion constitutes a finding of negligence. The District Court however, then erroneously concludes that "[t]he evidence is unconvincing that petitioner experienced any discomfort or injury which could remotely create a weak link in his musculo-skeletal system." (See Appendix A, p. 3). That conclusion was made despite the uncontroverted testimony of NERRY LAWSON'S treating neurosurgeon that the injuries sustained in the March, 1985, accident were causally connected to the back injuries for which he performed surgery on NERRY LAWSON.

The trial testimony of petitioners, NERRY E. and JUNE J. LAWSON, supports a conclusion that NERRY E. LAWSON was injured in the March, 1985, accident as does the recorded statement of NERRY E. LAWSON given to DIAMOND M COMPANY and introduced at trial by DIAMOND M COMPANY. That recorded statement was the first occasion on which DIAMOND M COMPANY questioned petitioner, NERRY E. LAWSON, as to whether he injured his back in the March, 1985, accident and he responded that he had in fact injured his back at that time. A review of the evidence involving the injury in March, 1985, clearly shows that a preponderance of the evidence establishes that NERRY E. LAWSON sustained a back injury. The District Court's conclusion is apparently predicated entirely on the fact that NERRY E. LAWSON continued to work and did not seek medical attention or report the injury to his employer. Despite his worsening injuries, NERRY E. LAWSON was able to continue working, albeit in pain, as his post-accident work responsibilities were less physically strenuous than were his pre-accident job duties. The failure to report the injury to his employer is understandable in view of the fact that NERRY E. LAWSON'S supervisor was the very co-employee whose negligence had resulted in the injury and NERRY E. LAWSON was loath to report his injuries at a time when they were not disabling and he hoped that they were not serious. A review of the evidence concerning NERRY E. LAWSON'S injuries shows that the fact of a back injury was established by a preponderance of the evidence and that the District Court's decision to the contrary was clearly erroneous and should have been reversed by the Fifth Circuit Court of Appeals. The failure to reverse the erroneous decision of the District Court sanctioned a departure from the accepted and usual course of judicial proceedings and warrants a grant of review of the petition for writ of certiorari.

As to the May, 1985, accident at the fire fighting school, the District Court held that NERRY E. LAWSON sustained a back injury but concluded that NERRY E. LAWSON had not proved the existence of his fire phobia or that he had communicated his

fire phobia to anyone. Medical records of NERRY E. LAWSON'S treatment for burns sustained in an automobile accident were introduced at trial and both NERRY E. LAWSON and JUNE LAWSON testified as to the reality of NERRY E. LAWSON'S fire phobia and gave specific examples of the phobia other than the accident involved herein. NERRY E. LAWSON further testified that he had communicated his fear of fire to his immediate supervisor, Gerald Hebert. Gerald Hebert denied that he had been so informed. However, it must be noted that the District Court chose to credit Mr. Hebert's testimony regarding his denial of being informed of the fire phobia and yet chose to disregard his testimony denying that the incident with the personnel basket in March, 1985, had occurred. No explanation is offered by the District Court as to why one portion of Gerald Hebert's testimony is deemed credible and another portion is not. Gerald Hebert's testimony should be discredited as he is a long term employee of DIAMOND M COMPANY whose negligence on two separate occasions resulted in injury to NERRY LAWSON.

While NERRY E. LAWSON may not have broadcast his phobia to all of the men on board the DIAMOND M. EAGLE, it only makes sense that someone who had gone through his harrowing previous experience with fire would be afraid of fire and reluctant to re-experience the fear associated with fire and smoke. It only makes sense that MR. LAWSON would bring to the attention of his supervisor, Mr. Hebert, his fear of fire.

The District Court's findings that NERRY E. LAWSON did not prove his fire phobia by a preponderence of the evidence and that he did not communicate that fire phobia to his supervisors are clearly erroneous and depart from the accepted and usual course of judicial proceedings and should not have been affirmed at the appellate level.

CLAIMS FOR LOSS OF CONSORTIUM AND LOSS OF SOCIETY

Evidence clearly indicates that the petitioner's back problems and resulting surgery were in fact caused by the work-related accidents and, therefore the claim of MRS. LAWSON for loss of consortium and the claim of the minor children, TONYA and TERI LAWSON, for loss of society must be reconsidered and an award for these claims is clearly mandated.

The right of a spouse to recover under the general maritime law for loss of consortium due to the injuries sustained by a seaman is well established. *American Export Lines, Inc. vs. Alvez*, 446 U.S. 274, 100 S. Ct. 1673, 64 L.Ed 2d 284 (1980); *Cruz vs. Hendy International Company*, 638 F. 2d 719 (5th Cir. 1981). To date, as a result of the injuries sustained by NERRY E. LAWSON, his wife, JUNE LAWSON, has suffered a loss of her husband's consortium for approximately forty-five (45) months. During that time, MRS. LAWSON has experienced a loss of her husband's companionship, attention and society, and has been required to perform a large number of services previously executed by her husband.

Additionally, NERRY E. LAWSON'S children have experienced a loss of their father's society, including love, attention and companionship, as a result of the injuries sustained by him. The children's loss of society is compensable under the general maritime law. *Kelly vs. T. L. James Company, Inc.*, 603 F. Supp. 390 (W.D. La. 1985).

CONCLUSIONS

Review of the District Court's findings that (1) NERRY E. LAWSON was not injured in the March, 1985, accident and (2) that NERRY E. LAWSON did not prove his fire phobia or communicate that phobia will show that those conclusions are not supported by the evidence nor are they in accord with the

liberal construction historically required under the Jones Act, 46 U.S.C.A. § 688. Therefore, the District Court's decision constitutes a departure from the accepted and usual course of judicial proceedings, which departure was improperly sanctioned by the United States Court of Appeals for the Fifth Circuit. Consequently, a review of the petition for writ of certiorari should be granted so that petitioner, NERRY E. LAWSON, is not unjustifiably and irrevocably denied his rights under the Jones Act, 46 U.S.C.A. § 688.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing brief has been served on all counsel by U.S. Mail, on this 12th day of December, 1988.

RICHARD J. ARSENAULT

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Filed February 25, 1988

NERRY E. and JUNE J. LAWSON, et al.	*	CIVIL ACTION
	*	NUMBER 86-0600
VERSUS	*	
	*	SECTION: "A"
DIAMOND M COMPANY	*	(JUDGE LITTLE)

OPINION

Nerry Lawson, an admitted seaman, filed this complaint under the Jones Act and general maritime law seeking damages, compensatory and punitive, suffered at the hands of his employer and vessel owner defendant Diamond M. Joining in the general maritime portion of the complaint are June Lawson, Tonya Lawson and Teri Lawson. June is the seaman's wife, Tonya and Teri are his minor children. Their claims are for loss of consortium and society respectively. At trial the plaintiff seaman did not present any evidence supporting his demand for damages and attorney fees due to defendant's willful, callous, unreasonable and arbitrary refusal to pay maintenance and cure benefits at the proper rate. Accordingly, the judgment to be rendered in this case as to those demands will be in favor of the defendant, a legal conclusion adhered to by counsel for the affected plaintiff.

The live testimony filled the better part of two days of trial. Giving due attention to that testimony as well as the ample documentary evidence of record, the Court now presents its findings of fact and conclusions of law.

After defendant's jack-up rig completed its drilling mission off the coast of Chile, the rig was placed on a ship and towed to the United States. Although plaintiff was usually a crane operator assigned to the jack-up rig, he did not perform as such on the slow return trip to the States. Instead, he was relegated to the position of roustabout. More specifically, plantiff was assigned to chip and paint the moribund rig as it was being transported toward domestic waters.

In order to visit the rig, plaintiff and a fellow worker were lowered from the towing vessel onto the platform upon which the rig was resting. The descent was accomplished by the workers holding on to a personnel basket which was attached to a cable, which cable was threaded through the pulleys of a crane and wound on a spool. The apparatus resembled a giant fishing rod and reel, with the plaintiff and friend clinging to the distal end of the mechanism. The personnel basket itself, was, at extension, pear-shaped and made of heavy net with a round rubber ring at the bottom. The passengers store their gear in the middle of the net, but ride on the outside of the net facing the middle while standing on the rubber ring. Usually, the basket is lowered slowly by the crane operator. When the solid ring hits the touchdown area, the crane operator stops releasing cable and the passengers step from the ring onto the deck.

In March of 1985, a peculiar event occurred. While riding down on the personnel basket plaintiff and fellow worker Emile Beridon experienced a faster ride and a quicker stop than is usually provided. Plaintiff described the event as a free-fall. His appreciation is more easily understood when likened to a conventional shift automobile. If one allows an auto to run downhill while in neutral and half way down the decline the operator shifts the gear from neutral to second gear, an immediate braking effect results. This sudden reduction in speed was felt by plaintiff and Beridon. Although the crane operator, Gerald Hebert, denies free-falling the personnel basket either in error or in jest, the court is convinced that the descent was other than ordinary and the sudden speed reduction was other than routine.

The evidence is unconvincing that the plaintiff experienced any discomfort or injury which could remotely create a weak link in his musculoskeletal system. Nothing supports such a conclusion. Plaintiff continued to work without complaint or mention of that incident until August of 1985. Plaintiff never sought the services of any physician, did not complain to his employer, did not treat the incident at any time as one requiring memoralization by completing an accident report form, did not mention the incident, let alone any adverse consequences, to any person with whom he worked, traveled or socialized. Plaintiff's duties required physical stress and strain. He worked until May with but one blemish and that's when he sought and received medical treatment on the rig for a leg burn acquired on shore but no complaint was ever voiced to anyone about the results of the basket incident other than that allegedly made to plaintiff's wife. The Court is, as has been stated, unconvinced by the evidence that anything untoward transpired as a result of the basket incident.

Defendant's safety policy includes training of its employees under simulated fire emergency conditions. Plaintiff was advised to attend a fire awareness session conducted in May of 1985 at Westwego, Louisiana. Plaintiff attended and while wearing an oxygen tank and gas mask, in a building filled with smoke, became addled and fell down some stairs, which fall caused injury to his tailbone. Upon substantial completion of the remaining exercises, plaintiff returned home voicing back disorder complaints. Those complaints were the subject of medical attention from physicians Ray Beurlot in Alexandria, Louisiana and H. Soboloff in New Orleans. The treatment received was not curative. In March of 1986 plaintiff engaged another New Orleans orthopaedist, John Jackson, who ultimately performed surgery on plaintiff's back.

The result of the fall at the fire training school is not laid at the feet of the defendant because of faulty supervisory personnel or inadequate or dangerous training tools. Quite to the contrary.

No inadequacy in training or equipment is alleged. The fault lies with the defendant forcing the plaintiff to expose himself to the feigned fire when defendant knew that plaintiff had a fire phobia. In fact, according to plaintiff, when plaintiff was ordered to appear some days before the training session plaintiff informed his supervisor that he was afraid of fire and would be emotionally and physically unstable if he had to become centered in a conflagration.

Here again, a preponderance of evidence does not support plaintiff's allegations. Plaintiff did suffer exposure to fire and did survive a harrowing event. That event occurred approximately seventeen years prior to the Westwego event. No medical evidence is presented to shore up plaintiff's allegations of fire phobia. At no time after the fire incident did plaintiff ever tell anyone that he had attempted to eschew the exercise. Plaintiff never told anyone post-accident, *"You see, I told you so, exactly what happened was what I was afraid of -- I panicked, I was injured. I told you so."* The accident report, the recorded conversation with defendant's claim agent, the medical history given the physicians and conversations with fellow workers do not present one scintilla of a post-accident repository for "I told you so" type response by the plaintiff. More importantly, there is no evidence that plaintiff beamed his protestations to anyone at the Westwego site before, during or after the fire fighting lesson. The individual to whom the plaintiff allegedly spoke denies receiving such a message. It is more probable than not that plaintiff's fear, if any, was not expressed to any employee or agent of the defendant. The Court is not moved by the "real men don't eat quiche" argument of plaintiff which attempts to shield the obvious conclusion.

The fall at the fire drill produced injury, without a doubt. According to plaintiff's physician, John Jackson, the basket incident of March of 1985 was mentioned to Jackson during Jackson's initial examination of plaintiff on 17 March 1986. That examination which precedes the filing of this suit by three days is the first record of plaintiff to a physician of the basket incident of

March of 1985. Medical examinations more contemporaneous with the fire incident do not reveal any disclosure of the March event by the plaintiff.

The threshold question is, what caused the condition for which plaintiff received surgery? It is clear that the fire fighting incident supplied no less than the lion's share of responsibility but proof of the causal connection between the basket incident and the back condition is lacking to any persuasive degree. Taking all of the evidence, or lack of it, the Court is not convinced that it is more probably than not that the basket incident played even the slightest part in the cause of plaintiff's injury.

Accordingly, judgment will be rendered in favor of defendant on all aspects of all plaintiffs' claims. Defendant will submit an appropriate judgment as suggested by the substance of this opinion.

SIGNED in Alexandria, Louisiana on 25 February 1988.

/S/ F.A. Little, Jr.

UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 88-4209
Summary Calendar

NERRY E. AND JUNE J. LAWSON, ET AL.,
Plaintiffs-Appellants,

versus

DIAMOND M COMPANY,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
(CV-86-0600-A)

(August 19, 1988)

Before REAVLEY, POLITZ, and JONES, Circuit Judges.

EDITH H. JONES, Circuit Judge:*

This appeal arises from a no liability verdict in a Jones Act suit brought by a seaman seeking damages for personal injuries

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

allegedly sustained while in the employ of the Appelle's shipping company. Finding no error below, we affirm.[1/]

Appellant Nerry Lawson asserts in his complaint that a spinal condition for which he underwent corrective surgery in 1986 resulted from two accidents that occurred within the course and scope of his employment with Appellee Diamond M Company. The first accident allegedly occurred in march of 1985, while Lawson was being lowered to a rig aboard a Diamond M vessel. Lawson reports that he was jerked, and his back was jarred, when the basket stopped after being lowered too quickly. The second alleged accident occurred at fire fighting school which Lawson attended as part of his training with Diamond M. Lawson states that, due to an alleged "fire phobia," he panicked during a simulated fire and fell, injuring his back. The trial court ruled in favor of Diamond M after finding that (1) there was insufficient evidence that the "basket incident" caused or was a contributing cause of Lawson's back condition, and (2) Diamond M could not be liable for negligently allowing Lawson to participate in the fire fighting seminar because Lawson did not express his alleged fear of fire to Diamond M.[2/]

We review the district court's findings of fact under the standard set forth in Federal Rule of Civil Procedure 52(a). Under this clearly erroneous standard, the district court's finding of facts must be upheld if "plausible in light of the record viewed in its entirety." *Anderson vs. City of Bessemer City, North Carolina*, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 1511 (1985). Lawson

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1/ Lawson's wife and two minor children joined the general maritime portion of the complaint, claiming loss of consortium and society, and are also Appellants in this case. Because we find no error in the district court's determination, these derivative claims also fail.

2/ Lawson alleged only that Diamond M was negligent in permitting his attendance at the training session, and made no claim of negligence with regard to the training personnel or equipment.

has not persuaded us that this standard should be deployed against the trial court here.

To support its determination that Lawson did not suffer any injury from the basket incident which contributed to his back condition, the district court cited the following evidence:

> Plaintiff continued to work without complaint or mention of . . . [the basket] incident until August of 1985. The Plaintiff never sought the services of any physician, did not complain to his employer, did not treat the incident at any time as one requiring memorialization by completing an accident report form, did not mention the incident, let alone any adverse consequences, to any person with whom he worked, traveled or socialized. Plaintiffs duties required physical stress and strain. He worked until May with but one blemish and that is when he sought and received medical treatment on the rig for a leg burn acquired on shore. But no complaint was ever voiced to anyone about the results of the basket incident other than that allegedly made to Plaintiff's wife.

In response to inquiries as to why Lawson failed to complain or report the incident either formally or informally, Lawson stated that he believed such action might have resulted in his dismissal since the individual responsible for lowering the basket was his immediate superior. We, like the district court, find this testimony unconvincing and inconsistent with Lawson's allegations.

The only issue before the court with regard to the fire accident was the alleged negligence of Diamond M in allowing Lawson to attend fire school when he was afflicted with a "fire phobia."[3/] Lawson's allegation that he informed his supervisor

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3/ Lawson alleged that he developed a fire phobia after suffering severe burns in an incident which occurred 17 years prior to his fire school accident.

of his phobia and that he was forced nonetheless to attend the training session is effectively rebutted by his supervisor's denial of any such communication and by uncontested evidence that no one at the training facility or in Diamond M's training department was notified of Lawson's affliction. Moreover, no "I told you so"-type statement was communicated to any Diamond M employee after the accident occurred. Furthermore, as the district court notes, there is little evidence to support the existence of Lawson's phobic condition. No medical evidence was adduced for this purpose and Lawson's position with Diamond M included fire fighting duties, a fact inconsistent with a serious fear of fire. We judge this evidence sufficient to support the district court's finding that Diamond M had not been apprised of any facts which would render it negligent in requesting Lawson to attend the training seminar. The judgment of the district court is **AFFIRMED.**

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 88-4209

NERRY E. LAWSON, Individually and
O/B/O Minor Children, Tonya, Lynn and
Teri Sue Lawson and JUNE J. LAWSON, Etc.,
Plaintiffs-Appellants,

versus

DIAMOND M COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING
(September 14, 1988)

Before REAVLEY, POLITZ and JONES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby **DENIED.**